

1 SEYFARTH SHAW LLP
2 Mark P. Grajski (SBN 178050)
3 E-mail: mgrajski@seyfarth.com
4 Tiffany T. Tran (SBN 294213)
5 ttran@seyfarth.com
6 400 Capitol Mall, Suite 2350
7 Sacramento, California 95814-4428
8 Telephone: (916) 448-0159
9 Facsimile: (916) 558-4839

10 Attorneys for Defendant
11 TEAM INDUSTRIAL SERVICES, INC.

12 RAUL GARFIAS, an individual,) Case No. 2:17-CV-04282-JAK-AGR
13 Plaintiff,) **STIPULATED PROTECTIVE
14 v.) ORDER**
15 TEAM INDUSTRIAL SERVICES, INC.)
16 a Texas corporation, also doing business)
17 as DK Valve and Supply, Inc. and DOES)
18 1 through 20, inclusive,)
19 Defendants.)
20
21

22 1. PURPOSES AND LIMITATIONS

23 Disclosure and discovery activity in this action are likely to involve
24 production of confidential, proprietary, or private information for which special
25 protection from public disclosure and from use for any purpose other than
26 prosecuting this litigation may be warranted. Accordingly, the parties hereby
27 stipulate to and petition the court to enter the following Stipulated Protective
28 Order. The parties acknowledge that this Order does not confer blanket protections
on all disclosures or responses to discovery and that the protection it affords from

1 public disclosure and use extends only to the limited information or items that are
2 entitled to confidential treatment under the applicable legal principles. The parties
3 further acknowledge, as set forth in Section 12.3, below, that this Stipulated
4 Protective Order does not entitle them to file confidential information under seal;
5 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
6 standards that will be applied when a party seeks permission from the court to file
7 material under seal.

8 2. **DEFINITIONS**

9 2.1 **Challenging Party**: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c).

14 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House
15 Counsel (as well as their support staff).

16 2.4 **Designating Party**: a Party or Non-Party that designates information
17 or items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 2.5 **Disclosure or Discovery Material**: all items or information, regardless
20 of the medium or manner in which it is generated, stored, or maintained (including,
21 among other things, testimony, transcripts, and tangible things), that are produced
22 or generated in disclosures or responses to discovery in this matter.

23 2.6 **Expert**: a person with specialized knowledge or experience in a
24 matter pertinent to the litigation who has been retained by a Party or its counsel to
25 serve as an expert witness or as a consultant in this action.

26 2.7 **House Counsel**: attorneys who are employees of a party to this action.
27 House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a
4 party to this action but are retained to represent or advise a party to this action and
5 have appeared in this action on behalf of that party or are affiliated with a law firm
6 which has appeared on behalf of that party, and includes support staff.

7 2.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.
26 However, the protections conferred by this Stipulation and Order do not cover the
27 following information: (a) any information that is in the public domain at the time
28 of disclosure to a Receiving Party or becomes part of the public domain after its

1 disclosure to a Receiving Party as a result of publication not involving a violation
2 of this Order, including becoming part of the public record through trial; and (b)
3 any information known to the Receiving Party prior to the disclosure or obtained
4 by the Receiving Party after the disclosure from a source who obtained the
5 information lawfully and under no obligation of confidentiality to the Designating
6 Party, unless compelling reasons supported by specific factual findings to proceed
7 otherwise are made to the trial judge in advance of the trial. *See Kamakana v. City*
8 *and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
9 “good cause” showing for sealing documents produced in discovery from
10 “compelling reasons” standard when merits-related documents are part of court
11 record). Any use of Protected Material at trial shall be governed by a separate
12 agreement or order.

13 4. **DURATION**

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order shall remain in effect until a Designating Party agrees
16 otherwise in writing or a court order otherwise directs. Final disposition shall be
17 deemed to be the later of (1) dismissal of all claims and defenses in this action,
18 with or without prejudice; and (2) final judgment herein after the completion and
19 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
20 including the time limits for filing any motions or applications for extension of
21 time pursuant to applicable law.

22 5. **DESIGNATING PROTECTED MATERIAL**

23 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**
24 Each Party or Non-Party that designates information or items for protection under
25 this Order must take care to limit any such designation to specific material that
26 qualifies under the appropriate standards. The Designating Party must designate for
27 protection only those parts of material, documents, items, or oral or written
28 communications that qualify – so that other portions of the material, documents,

1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber or retard the case development process or
6 to impose unnecessary expenses and burdens on other parties) expose the
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the mistaken designation.

11 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to
20 each page that contains protected material. If only a portion or portions of the
21 material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the
23 margins).

24 A Party or Non-Party that makes original documents or materials available
25 for inspection need not designate them for protection until after the inspecting
26 Party has indicated which material it would like copied and produced. During the
27 inspection and before the designation, all of the material made available for
28 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has

1 identified the documents it wants copied and produced, the Producing Party must
2 determine which documents, or portions thereof, qualify for protection under this
3 Order. Then, before producing the specified documents, the Producing Party must
4 affix the “CONFIDENTIAL” legend to each page that contains Protected Material.
5 If only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins).

8 (b) for testimony given in deposition or in other pretrial or trial
9 proceedings, that the Designating Party identify on the record, before the close of
10 the deposition, hearing, or other proceeding, all protected testimony.

11 (c) for information produced in some form other than documentary
12 and for any other tangible items, that the Producing Party affix in a prominent
13 place on the exterior of the container or containers in which the information or
14 item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the
15 information or item warrant protection, the Producing Party, to the extent
16 practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the Designating Party’s right to secure protection under this Order for such
20 material. Upon timely correction of a designation, the Receiving Party must make
21 reasonable efforts to assure that the material is treated in accordance with the
22 provisions of this Order.

23 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time. Unless a prompt challenge to a
26 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
27 substantial unfairness, unnecessary economic burdens, or a significant disruption
28 or delay of the litigation, a Party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process by providing written notice of each designation it is challenging
5 and describing the basis for each challenge. To avoid ambiguity as to whether a
6 challenge has been made, the written notice must recite that the challenge to
7 confidentiality is being made in accordance with this specific paragraph of the
8 Protective Order. The parties shall attempt to resolve each challenge in good faith
9 and must begin the process by conferring directly (in voice to voice dialogue; other
10 forms of communication are not sufficient) within 14 days of the date of service of
11 notice. In conferring, the Challenging Party must explain the basis for its belief that
12 the confidentiality designation was not proper and must give the Designating Party
13 an opportunity to review the designated material, to reconsider the circumstances,
14 and, if no change in designation is offered, to explain the basis for the chosen
15 designation. A Challenging Party may proceed to the next stage of the challenge
16 process only if it has engaged in this meet and confer process first or establishes
17 that the Designating Party is unwilling to participate in the meet and confer process
18 in a timely manner.

19 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
20 court intervention, the Designating Party shall file and serve a motion to retain
21 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
22 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
23 days of the parties agreeing that the meet and confer process will not resolve their
24 dispute, whichever is earlier. Each such motion must be accompanied by a
25 competent declaration affirming that the movant has complied with the meet and
26 confer requirements imposed in the preceding paragraph. Failure by the
27 Designating Party to make such a motion including the required declaration within
28 21 days (or 14 days, if applicable) shall automatically waive the confidentiality

1 designation for each challenged designation. In addition, the Challenging Party
2 may file a motion challenging a confidentiality designation at any time if there is
3 good cause for doing so, including a challenge to the designation of a deposition
4 transcript or any portions thereof. Any motion brought pursuant to this provision
5 must be accompanied by a competent declaration affirming that the movant has
6 complied with the meet and confer requirements imposed by the preceding
7 paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has
12 waived the confidentiality designation by failing to file a motion to retain
13 confidentiality as described above, all parties shall continue to afford the material
14 in question the level of protection to which it is entitled under the Producing
15 Party's designation until the court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this
19 case only for prosecuting, defending, or attempting to settle this litigation. Such
20 Protected Material may be disclosed only to the categories of persons and under
21 the conditions described in this Order. When the litigation has been terminated, a
22 Receiving Party must comply with the provisions of section 13 below (FINAL
23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as
4 well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
7 A;

8 (b) the officers, directors, and employees (including House Counsel)
9 of the Receiving Party to whom disclosure is reasonably necessary for this
10 litigation and who have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial
17 consultants, mock jurors, and Professional Vendors to whom disclosure is
18 reasonably necessary for this litigation and who have signed the “Acknowledgment
19 and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the “Acknowledgment and
22 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
23 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
24 to depositions that reveal Protected Material must be separately bound by the court
25 reporter and may not be disclosed to anyone except as permitted under this
26 Stipulated Protective Order.

27 (g) the author or recipient of a document containing the information
28 or a custodian or other person who otherwise possessed or knew the information.

(h) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-
8 Party that some or all of the information requested is subject to a confidentiality
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this litigation, the relevant discovery request(s), and a
12 reasonably specific description of the information requested; and

13 (3) make the information requested available for inspection by the
14 Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from this court
16 within 14 days of receiving the notice and accompanying information, the
17 Receiving Party may produce the Non-Party's confidential information responsive
18 to the discovery request. If the Non-Party timely seeks a protective order, the
19 Receiving Party shall not produce any information in its possession or control that
20 is subject to the confidentiality agreement with the Non-Party before a
21 determination by the court. Absent a court order to the contrary, the Non-Party
22 shall bear the burden and expense of seeking protection in this court of its
23 Protected Material.

24 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its

1 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
2 the person or persons to whom unauthorized disclosures were made of all the terms
3 of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
5 A.

6 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
7 **PROTECTED MATERIAL**

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other
10 protection, the obligations of the Receiving Parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
12 whatever procedure may be established in an e-discovery order that provides for
13 production without prior privilege review. Pursuant to Federal Rule of Evidence
14 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
15 of a communication or information covered by the attorney-client privilege or
16 work product protection, the parties may incorporate their agreement in the
17 stipulated protective order submitted to the court.

18 12. **MISCELLANEOUS**

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order no Party waives any right it otherwise would have to object to
23 disclosing or producing any information or item on any ground not addressed in
24 this Stipulated Protective Order. Similarly, no Party waives any right to object on
25 any ground to use in evidence of any of the material covered by this Protective
26 Order.

27 12.3 Filing Protected Material. Without written permission from the
28 Designating Party or a court order secured after appropriate notice to all interested

1 persons, a Party may not file in the public record in this action any Protected
2 Material. A Party that seeks to file under seal any Protected Material must comply
3 with Civil Local Rule 79-5. Protected Material may only be filed under seal
4 pursuant to a court order authorizing the sealing of the specific Protected Material
5 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
6 request establishing that the Protected Material at issue is privileged, protectable as
7 a trade secret, or otherwise entitled to protection under the law. If a Receiving
8 Party's request to file Protected Material under seal pursuant to Civil Local Rule
9 79-5(d) is denied by the court, then the Receiving Party may file the information in
10 the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
11 by the court.

12 13. **FINAL DISPOSITION**

13 Within 60 days after the final disposition of this action, as defined in
14 paragraph 4, each Receiving Party must return all Protected Material to the
15 Producing Party or destroy such material. As used in this subdivision, “all
16 Protected Material” includes all copies, abstracts, compilations, summaries, and
17 any other format reproducing or capturing any of the Protected Material. Whether
18 the Protected Material is returned or destroyed, the Receiving Party must submit a
19 written certification to the Producing Party (and, if not the same person or entity, to
20 the Designating Party) by the 60 day deadline that (1) identifies (by category,
21 where appropriate) all the Protected Material that was returned or destroyed and
22 (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
25 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
26 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
27 reports, attorney work product, and consultant and expert work product, even if
28 such materials contain Protected Material. Any such archival copies that contain or

1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5
6 DATED: March 23, 2018

SEYFARTH SHAW LLP

7
8 By: /s/ Tiffany T. Tran
9 Mark P. Grajski
10 Tiffany T. Tran
11 Attorneys for Defendant
12 TEAM INDUSTRIAL SERVICES,
13 INC.

14
15 DATED: March 23, 2018

EMPLOYEE JUSTICE LEGAL
16 GROUP, LLC

17
18 By: /s/ Sylvia V. Panosian
19 Kaveh S. Elihu
20 Sylvia V. Panosian
21 Attorneys for Plaintiff
22 RAUL GARFIAS

23
24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25
26 Dated: April 4, 2018



27
28 Honorable Alicia G. Rosenberg
United States District Judge

SIGNATURE CERTIFICATION

3 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative
4 Policies and Procedures Manual, I hereby certify that the content of this document
5 is acceptable to Sylvia V. Panosian, counsel for Plaintiff, and I have obtained Ms.
6 Panosian's authorization to affix his/her electronic signature to this document.

7 | DATED: March 23, 2018

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Tiffany T. Tran
Mark P. Grajski
Tiffany T. Tran

Attorneys for Defendant
Team Industrial Services, Inc.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of _____ [insert formal name of the case and the
8 number and initials assigned to it by the court]. I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms
17 of this Stipulated Protective Order, even if such enforcement proceedings occur
18 after termination of this action.

19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24 || Date: _____

25 | City and State where sworn and signed: _____

26 || Printed name:

27 || Signature: